THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.21813, 23042 & 24704 of 2001

Date : 28-9-2006

W.P.No.21813/2001

Between:

National Insurance Company Limited,
Hyderabad Regional Office,
Represented by B.Praveen Kumar,
Deputy Manager, Hyderabad. .. Petitioner

And

Additional Commissioner (Finance),
Municipal Corporation of Hyderabad. .. Respondent

W.P.No.23042/2001

Prestige Cloth Shop and
Readymade shop, Safilguda,
Hyderabad. .. Petitioner

And

The Municipal Corporation of Hyderabad,
represented by its Commissioner, Tank
Bund, Hyderabad and another. .. Respondents

W.P.No.24704/2001

M/s.Panchajanya Apparels,
Chikkadpally, Hyderabad. .. Petitioner

And

The Municipal Corporation of Hyderabad,
represented by its Commissioner, Tank
Bund Road, Hyderabad and another. .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.21813, 23042 & 24704 of 2001

COMMON ORDER:

1. These three Writ Petitions are being disposed of by this Common Order since the questions of fact and the questions of Law involved being common.

2. These Writ Petitions are filed by the respective petitioners questioning the demand notices issued by the respondent on several grounds. In W.P.No.21813/2001 filed by the National Insurance Company Limited, the notice dated 20-8-2001 was questioned. It is stated that the petitioner-National Insurance Company Limited has been established under the Companies Act 1956 and is a statutory body established by the Union of India and it is a sister organisation of General Insurance Company. The main object of the petitioner Company is to cover the risk and give redressal by way of payment of compensation to the insured and to the third parties. The petitioner-Company is not intended to do business with people and it is not meant for any commercial business. It is also stated that the petitioner-Company is a Regional Office in Hyderabad which it operates throughout the State of Andhra Pradesh. The signboard of the Regional Office of petitioner-Company was erected lock back in the premises of Mogul's Court building. The name board of the petitioner-Company is meant for identification of its office which is located in the 3rd and the 7th floors of the Mogul's building. The Mogul's Court building has nine floors and along with the Regional Office of the petitioner's-Company some other establishments are also doing business. The name board of to the petitioner-Company was erected to identify its office. It is also further

stated that the respondent had issued a notice dated 20-8-2001 which was received on 4-10-2001 with a demand to pay Rs.18,500/- by way of demand draft towards payment of arrears and current year advertisement fee. The above demand was made under Section 421 r/w.Section 622 of the Hyderabad Municipal Corporations Act 1955, hereinafter in short referred to as "Act" for the purpose of convenience. It is further stated that the petitioner-Company's name board had been erected to identify its establishment of Regional Office. The petitioner-Company did not project or advertise any of its products or policies and it does not come within the purview of Section 421 of the Act and therefore the notice is illegal. The written permission to put the name board is not required from the respondent because the name board does not attract the provisions of the Act. It is also further stated that under clause (c) of Section 421(1) of the Act, exemption was given to the business of any railway administration. Likewise, the petitioner-Company is also a public sector undertaking and the office is an administrative establishment. Therefore the provisions of Section 421 r/w. Section 622 of the Act will not be attracted and the demand notice issued by the respondent is illegal and unsustainable. In such circumstances, questioning the said action the petitioner approached this Court. Rule Nisi was issued on 18-10-2001, but however no interim order was made.

3. In W.P.No.23042/2005 it is stated that the petitioner had been carrying on cloth business and readymade garments in the shop premises by erecting the name boards/board frames to the shop on the parapet wall by paying all necessary taxes etc., to the authorities concerned. It is further stated that it is common that each and every business establishment anywhere to have name board/board frames erected/displayed at conspicuous place of the establishment in order to facilitate easy and convenient identification of the nature of business and the name of the shop and the establishment by its customers and various

authorities and it is for the said purpose the business establishments are using more convenient and improvised methods by way of glow signboards and this practice had been in vogue uninterruptedly for the last many decades. While the matters stood thus, the 2nd respondent issued self-declaration form for exhibiting, displaying advertisements under Form No.1 in the second week of October 2001 and asked the petitioner to assess the amount to be paid by calculating the space of the name board for the purpose of paying advertisement fee and alleged that the petitioner had erected advertisement boards without obtaining prior permission from the Corporation and without paying advertisement fee as required under Sections 420 and 421 r/w. Section 622 of the Act and the Rules made thereunder. It is further stated that the Corporation directed the petitioner to pay the amount by way of demand draft along with the form and further directed that the said demand draft and the application shall be submitted to the advertisement officer within ten days from the date of receipt of the said assessment form. It is further stated that the petitioner and the other shop owners who got similar self assessment forms approached the 2nd respondent-Additional Commissioner (Finance), Advertisement Section of the Corporation and clarified in detail that the name board/board frames securely fixed on parapet wall of the business premises is neither a sky sign nor an advertisement nor the same contravenes the provisions of Sections 420 and 421 of the Act. The name board/board frames securely fixed is neither a hoarding nor a sky sign and the same is fixed for the purpose of enabling the customers to locate and identify the shop and as such it is not an advertisement as alleged in the assessment Form No.1. It is further stated that in spite of the explanation given by the petitioner and the other shop owners the 2nd respondent is insisting upon to pay the amounts towards advertisement fee without following the principles of natural justice. The respondents did not issue any notice before demanding the advertisement fee. Hence

the action of the respondents is in violative of the principles of natural justice. It is further stated that the officials of the 2nd respondent cited event of removal and damage of the sign boards on Chikkadpally Main Road in August 2000 whereat they removed the sign boards proclainers and thereby caused huge loss to the properties of the shops and in the said process about 30 shops' name board/board frames had been removed and destroyed beyond any use and the officials warned the petitioner that the petitioner would be subjected to the same treatment. In such circumstances, questioning the said action the petitioner approached this Court. This Court issued Rule Nisi on 7-11-2001 and granted interim stay.

4. In W.P.No.24704/2001 the writ petitioner had stated that the petitioner had been carrying on cloth business and readymade garments in the shop premises by erecting the name boards/board frames to the shop on the parapet wall by paying all necessary taxes etc., to the authorities concerned. It is further stated that it is common for each and every business establishment anywhere to have name board/board frames erected/displayed at conspicuous place of the establishment in order to facilitate easy and convenient identification of the nature of business and the name of the shop and establishment by its customers and various authorities and for the said purpose the business establishments are using more convenient and improvised methods by way of glow sign boards and this practice had been in vogue uninterruptedly for the last many decades. It is stated that while the matters stood thus, the 2nd respondent issued self declaration form for exhibiting, displaying advertisements under Form No.1 in the second week of November 2001 and asked the petitioner to assess the amount to be paid by calculating the space of the name board for the purpose of paying advertisement fee and alleged that the petitioner had erected advertisement boards without obtaining prior permission from the 1st

respondent-Corporation and without paying advertisement fee as required under Sections 420 and 421 r/w. Section 622 of the Act and the Rules made thereunder and the 2nd respondent directed the petitioner to pay the amount by way of demand draft in favour of the 1st respondent along with the form and further directed that the said demand draft and application shall be submitted to the advertisement officer within ten days from the date of receipt of the said assessment form. It is also further stated that the petitioner and the other shop owners who got similar self assessment forms approached the 2nd respondent and clarified in detail stating that the name board/board frames securely fixed on parapet wall of the business premises is neither a sky sign nor an advertisement and nor the same contravenes the provisions of Section 420 and 421 of the Act. The name board/board frames securely fixed is neither a hoarding nor a sky sign and the same is fixed for the purpose of enabling the customers to locate and identify the shop and as such it is not an advertisement as alleged in the assessment Form No.1. It is further stated that in spite of the explanation given by the petitioner and the other shop owners, the 2nd respondent is insisting upon the petitioner to pay the amount towards advertisement fee without following the principles of natural justice. The respondents did not issue any notice before demanding the advertisement fee and hence the action of the respondent is in violation of principles of natural justice. It is also further stated that the officials of the 2nd respondent cited the event of removal and damage of the sign boards on Chikkadpally Main Road in August 2000 whereat they removed the sign board proclainers and thereby caused huge loss to the properties of the shops and in the said process about 30 shops' name boards/board frames were removed and destroyed beyond any use and the officials warned the petitioner that the petitioner also will be subjected to the same treatment if the petitioner does not pay the advertisement fee within ten days. It is further stated that the respondents

had resorted to the impugned action under the guise of invoking the provisions of Section 420 and 421 of the Act. It is further stated by the petitioner that so far as Section 420 of the Act is concerned the same deals with sky signs, but the name board/board frames of the petitioner's business is not a sky sign as referred in the said Section. Therefore the said Section of Law is not applicable to the establishment of the petitioner since nothing is being advertised by putting such name boards. It is also further stated that from a perusal of Section 421(1)(b) of the Act it is clear that if advertisement is exhibited within the land or building in which the business is carried on no permission is necessary from the Municipal Corporation. The petitioner had erected the name boards/board frames on the shop in which the petitioner is running the business and therefore it is not necessary to obtain any permission from the Municipal Corporation. Hence the action of the respondents in directing the petitioner to pay the amount towards advertisement fee is illegal, arbitrary and the same is in violation of the principles of natural justice. It is further stated that the impugned action of the respondents is absolutely misconceived and misread into the true tenor of the statutory provisions of Sections 420 and 421 r/w. Section 622 of the Act. Clause (b) of sub-section (3) of Section 420, clause (b) of sub-section (1) of Section 421 and clause (b) of sub-section (4) of the Section 421 amply establishes that the name board/board frame securely fixed on the top of the wall of the shop premises does not constitute an advertisement and no license or written permission is necessary and there is no violation of the provisions of the Act and as such the impugned action of the respondents is arbitrary, illegal and the same is in violation of the principles of natural justice and it is liable to be set aside. In such circumstances, questioning the said action the petitioner approached this Court. Rule Nisi was issued on 3-12-2001, but however the application for grant of interim order was dismissed giving liberty to the petitioner to

file appropriate application as and when the demand is raised.

5. In the counter affidavit filed by the respondent in W.P.No.21813/2001 it is stated that there is no difference between the petitioner and the other establishments so far as implementation of Section 421 r/w. Section 622(1) of the Act is concerned. It is also stated that the petitioner had been displaying the board, may be for the purpose of identifying the place of the petitioner-Company, but in view of the fact that the said advertisement board is illuminated called sign boards, the same is not exempted from obtaining permission from the Corporation and as such the petitioner is bound to pay the required fee for the purpose of obtaining permission. It is also stated that it is true that the respondent had issued demand notice for displaying the advertisement at different places and the details of the same are as follows:

Sl.No.	Branch	Size of the Board in Sq.Mtrs.	Amount payable for 3 years (in Rs.)
1	RTC X Roads	5.0	15,500/-
2	Basheerbagh	6.0	18,500/-
3	M.J.Market	6.0	18,500/-
	TOTAL	17.0	52,500/-

It is further stated that admittedly the petitioner had displayed the advertisement board, may be showing the office of business of the petitioner, but as the said advertisement board is illuminated one, the requirement of obtaining permission for displaying the same is mandatory as contemplated under Section 421(1) of the Act. The exemption as contemplated under Section 421(1) will not be applicable as the advertisement being an illuminated one. Therefore it is the bounden duty of the petitioner for obtaining permission for displaying the advertisement by paying the required fee.

6. The counter affidavits filed in W.P.No.23042/2001 and 24704/2001 are almost on similar lines. Specific stand was taken that the petitioners in these Writ Petitions are displaying the illuminated

advertisement boards without proper permission of the Commissioner as required under Section 421 of the Act and only non-illuminated boards are exempted from obtaining permission provided the same satisfies the other conditions mentioned in Section 421 of the Act. It is stated that the petitioners are displaying the illuminated boards and hence the same are not exempted from obtaining permission under the provisions of the Act. It is also stated that the respondent issued a notification dated 14-4-1999 appealing to all the concerned for self-declaration and return for the purpose of obtaining permission to exhibit advertisement in twin cities and to regularise all the existing advertisements which are displayed without obtaining permission. It is further stated that once the advertisement is displayed without obtaining permission it is always open to the Corporation to remove the same and in stead of removing the advertisement and causing huge loss to the concerned the respondent-Corporation gave an opportunity to regularise the existing advertisement by making self-declaration furnishing the details of advertisement displayed and also to pay the fee that is prescribed as per the provisions of Section 421 r/w. Section 622 of the Act and therefore there is no violation of principles of natural justice as alleged by the petitioners and it is always open to them to submit the details about the size and nature of advertisement for arriving at the amount payable by them. It is also further stated that opportunity was given the concerned including the petitioner to furnish the necessary details in the self declaration form and pay the required fee and get the advertisement displayed regularised without obtaining permission from the Corporation. In case the petitioner failed to get the said unauthorised advertisement regularised it is always open to the Corporation to take appropriate action in accordance with the provisions of the Act for removal of the said advertisement erected unauthorisedly without obtaining permission from the Corporation. It is also further stated that the advertisement displayed by the petitioners is

illuminated one and as such the same is not exempted under Section 421 of the Act and the petitioners are bound to obtain permission before displaying the said advertisement. There is no illegality or arbitrariness on the part of the respondents and there is no violation of principles of natural justice.

7. As already referred to supra, the averments in the counter affidavit filed in W.P.No.24704/2001 also are on similar lines no doubt pleading certain additional facts denying what had been stated in the affidavit filed in support of the W.P.

8. Elaborate submissions were made by Sri Venkata Ratnam and Sri Srihari, Counsel representing the writ petitioners in these Writ Petitions and Sri Ganta Rama Rao, the Counsel representing the respondents.

9. Section 421 of the Act reads as hereunder :

Regulation and control of advertisements:-

(1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which –

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same, or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited;

(c) relates to the business of any railway administration;

(d) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and

except as permitted or exempted from permissions as hereinbefore provided, the owner of the person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who was erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, fixed or retained, to take down or remove such advertisement.

(4)(a) The word "structure" in this section shall include a tram car, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression "illuminated advertisement" in this section shall not include an illuminated display of goods if such display –

(i) is of goods merely bearing labels showing the name of the article or of its manufacture or of both; and

(ii) is made of lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

On the aspect of the meaning of "advertisement" strong reliance was placed on the decision of the Apex Court in **ICICI Bank Limited and another Vs. Municipal Corporation of Greater Bombay and others**[1]**.** Further reliance also was placed on the decision of the Division Bench of this Court in **Andhra Bank Zonal Office, Koti, Hyderabad Vs. The State of Andhra Pradesh and others** [2] and **Greeting Corner Vs. State of Andhra Pradesh** [3]. The Counsel for petitioners placed strong reliance on the decision of the Bombay High Court in **Ratiloku Shetty Vs. Municipal Corporation of Greater**

Mumbai [4]**.** Relating to the aspect of "advertisement" and the aspect of "illumination" elaborate submissions were made.

10. It is unfortunate that these expressions "advertisement" and "illumination" are not defined under the Act aforesaid. The Division Bench of this Court in W.P.No.4089/2005 at paras 7, 8 and 9 observed as hereunder :

> "A perusal of the said provision makes it clear that no person without written permission of the Commissioner, shall erect, exhibit, fix or retain any advertisement, upon any land, building wall, hoarding or structure. Such written permission is not necessary, in respect of any advertisement, which is not an illuminated advertisement, nor a sky sign, which relates to the trade of business carried on within the land or building upon which such advertisement is exhibited.
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> Therefore, the contention of the learned Counsel for the petitioner is that this glow signboard erected by the petitioner will not attract the provisions of Section 421 squarely. The learned Standing Counsel on the other hand contends that since it is self-illuminated glow signboard, it attracts the provisions squarely.
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> In view of the competing claims, it shall have to be considered whether the glow signboard erected by the petitioner on its own premises is 'advertisement' or not. It is a mixed question of law and fact, which shall have to be decided considering the facts and circumstances, along with the provisions germane for consideration in the context. Inasmuch as the petitioner has submitted a representation to the respondents, which according to its own case, is pending consideration, we are not inclined to adjudicate the contentious issue as to whether the glow sign board erected by the petitioner attracts the provisions of Section 421 of the Hyderabad Municipal Corporation Act and is 'advertisement', consequently exigible to advertisement tax. Instead it is appropriate to dispose of the Writ Petition directing the petitioner to approach the authorities inviting an order on the representation made by it and directing the authorities to dispose of the same having regard to the significance attached to such decision, which has wide range ramifications throughout the metropolis, as expeditiously as possible. It is also appropriate to direct the respondents, in our considered view, not to take any

> coercive steps for the collection of advertisement tax as proposed, nor to demolish signboard erected, pending consideration of its decision. In the meanwhile, we feel it appropriate to pass such orders as discussed hereinabove, having regard to the significance attached to the question involved and its wide range consequences in and around the metropolis, to avoid any future litigation."

In the light of the factual controversy and also in the light of the decisions referred to supra and further in the light of the language of Section 421 of the Act aforesaid, this Court is of the considered opinion that the impugned actions as such cannot be sustained and however in the peculiar facts and circumstances the matters are remitted to the respondents in the respective Writ Petitions giving opportunity to the respective writ petitioners to make their representations and the respective respondents to consider the said representations or objections relating to the applicability or otherwise of Section 421 of the Act and decide the same in accordance with the decisions referred to supra.

11. Accordingly, to the extent indicated above, the Writ Petitions are allowed. No costs.

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Justice P.S.Narayana

Date : 28-9-2006

L.R. copy to be marked : YES / NO

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[1] 2005 AIR SCW 4031

[2] W.P.No.4089/2005 dated 10-3-2005

[3] W.P.4304/2003 dated 13-10-2004

[4] AIR 2001 Bombay 380